

Message Text

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E.O. 11652: XGDS-3

TAGS: PFOR, PGOV, CS

SUBJECT: VESCO CASE - MEETING WITH UMANA

REF: STATE 144758

1. SUMMARY: DEPARTMENT'S DAY LONG MEETING WITH UMANA HELPFUL IN EXPLAINING OUR CHIEF CONCERNS ABOUT CURRENT AND PROPOSED EXTRADITION LEGISLATION IN COSTA RICA AND IN SHARPENING OUR AWARENESS OF AREAS OF POSSIBLE SUBSTANTIVE AND LANGUAGE PROBLEMS. IT WAS, HOWEVER, IN SOME WAY DISAPPOINTING. UMANA APPARENTLY CAME UNDER THE ASSUMPTION THAT WE WISHED TO DISCUSS THE RELATIONSHIP OF THE CURRENT LEGISLATION TO OUR BILATERAL TREATY AND NOT TO DISCUSS POSSIBLE CHANGES IN THAT LEGISLATION. NEVERTHELESS, HE WAS COOPERATIVE IN DISCUSSING ALL ASPECTS WE WISHED TO COVER AND, ON BALANCE, THE EXCHANGE IS FELT TO HAVE BEEN A VALUABLE ONE. END SUMMARY.

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2. ON JUNE 27 DEPUTY LEGAL ADVISER AND OTHER OFFICIALS MET FOR A DAY LONG DISCUSSION WITH COSTA RICAN ASSISTANT ATTORNEY GENERAL, JORGE UMANA. UMANA WAS ACCOMPANIED BY EMBASSY MINISTER COUNSELOR ROGELIO NAVAS WHO WAS QUITE HELPFUL IN FACILITATING THE DISCUSSIONS. AT THE OUTSET OF THE TALKS IT BECAME CLEAR THAT UMANA WAS UNDER THE IMPRESSION THAT WE WISHED TO DISCUSS ONLY THE RELATIONSHIP OF THE CURRENT EXTRADITION LAW TO OUR BILATERAL EXTRADITION TREATY. WE HAD BEEN UNDER THE IMPRESSION FROM THE EMBASSY'S TELEGRAMS THAT UMANA HAD BEEN SENT BY PRESIDENT ODUBER TO DISCUSS HIS PROPOSALS FOR AMENDING THE CURRENT LEGISLATION IN SUCH A WAY AS TO PROVIDE FOR AN EFFECTIVE EXTRADITION PROCESS. WE EXPLAINED THIS TO UMANA WHO AGREED TO DISCUSS WHATEVER WE WISHED. WE ALSO ADVISED HIM THAT WE CONSIDERED THESE DISCUSSIONS TO BE OF STRICTEST CONFIDENCE AND THAT WE WOULD EXPECT THAT NO MENTION OF THEM WOULD BE MADE IN ANY WAY TO THE PRESS. WE TOOK CARE TO ENSURE HIM THAT OUR INTEREST IN THESE MATTERS REVOLVED AROUND THE NEED TO PROVIDE FOR EFFECTIVE EXTRADITION PROCEDURES BETWEEN OUR TWO COUNTRIES AND THAT WE FULLY RECOGNIZE THE AUTONOMY OF THE COSTA RICAN GOVERNMENT IN THE AREA OF DOMESTIC LEGISLATION. WE WERE OFFERING OUR COMMENTS AT WHAT WE UNDERSTOOD TO BE THE SUGGESTION OF PRESIDENT ODUBER AND IN A SPIRIT OF FRIENDLINESS AND COOPERATION. UMANA AGREED AND EMPHASIZED THE FRIENDLINESS OF HIS GOVERNMENT TOWARD OURS AND ITS DESIRE TO BE AS COOPERATIVE IN THIS MATTER AS POSSIBLE. HE ALSO EMPHASIZED THAT WHILE THE EXECUTIVE BRANCH WOULD COOPERATE FULLY WE SHOULD REMEMBER THAT DECISIONS WERE MADE BY AN INDEPENDENT JUDICIARY. WE EXPRESSED COMPLETE UNDERSTANDING AND ADMIRATION OF THIS AND NOTED THAT THE SYSTEM WAS SIMILAR TO OUR OWN. UMANA STRESSED THAT HE DID NOT QUITE SEE WHY THE MATTER OF DOMESTIC LAW SHOULD BE ONE OF GREAT CONCERN TO US AS ACCORDING TO HIM, OUR BILATERAL TREATY WOULD IN ALL CASES TAKE PRECEDENCE OVER IT. HE SEEMED TO HAVE A PROBLEM IN ACCEPTING THE CONCEPT THAT PROCEDURAL MATTERS COULD BE JUST AS IMPORTANT AS SUBSTANTIVE ONES, AND THAT NATIONAL LEGISLATION DEALING WITH SUBSTANTIVE POINTS NOT "COVERED" BY A TREATY COULD IMPAIR OPERATION OF THE TREATY.

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3. WE PROCEEDED BY DISCUSSING THE POINTS RAISED IN REFTTEL ONE BY ONE EXPLAINING THAT THE CURRENT BILL PENDING IN THE LEGISLATURE RECTIFIED MANY OF THE CONCERNS WE HAD WITH THE EXISTING LAW BUT THAT THERE WERE STILL AREAS OF CONCERN WHICH WE BELIEVE WOULD BE COVERED IF THE POINTS

WE PROCEEDED TO DISCUSS COULD BE INCORPORATED INTO

AMENDING LEGISLATION. WE PROVIDED UMANA WITH A SPANISH TRANSLATION OF THESE POINTS TO FACILITATE THE DISCUSSION. WE WILL BE CABLING EMBASSY A COPY OF THIS TRANSLATION INCORPORATING LANGUAGE CHANGES SUGGESTED BY OUR DISCUSSION WITH UMANA. THIS SHOULD BE PASSED TO UMANA UPON RECEIPT.

4. AFTER AN OFTEN FRUSTRATING DAY IN WHICH UMANA CONTINUALLY RETURNED TO HIS FIRST POINT THAT OUR CONCERN WAS PERHAPS UNWARRANTED SINCE OUR TREATY TOOK PRECEDENCE OVER DOMESTIC LAW, WE WERE ABLE TO ARRIVE AT THE FOLLOWING CONCLUSIONS:

(1) IT WAS AGREED THAT THE LANGUAGE WE HAVE SUGGESTED TO AMEND ARTICLE 1 OF THE PROPOSED BILL SHOULD BE IMPROVED. UMANA DID NOT APPEAR TO HAVE A SUBSTANTIVE PROBLEM WITH IT. BASICALLY WE ARE SEEKING TO ENSURE THAT IN NO CASE SHALL A DOMESTIC LAW BE APPLIED IN A MANNER WHICH WOULD DENY AN EXTRADITION REQUEST MADE IN ACCORDANCE WITH THE TREATY. SINCE UMANA AGAIN EMPHASIZED THE PRECEDENCE OF THE TREATY HE HAD NO PROBLEM WITH THIS CONCEPT.

(2) WE APPEAR TO HAVE A SUBSTANTIVE CONFLICT WITH REGARD TO ARTICLE 2(E) OF THE PENDING LEGISLATION. THIS IS SO BECAUSE MOST CRIMES COVERED BY U.S. FEDERAL LAW PROVIDE FOR THE ALTERNATIVE OF A FINE INSTEAD OF IMPRISONMENT WHEREAS COSTA RICA LAW APPEARS TO PROVIDE ONLY FOR IMPRISONMENT IN THE CASE OF SERIOUS OFFENSES. UMANA SUGGESTED THAT THIS DIFFERENCE MIGHT BE RECONCILED IF THE PARTY WERE TO BE SENTENCED TO IMPRISONMENT PRIOR TO EXTRADITION. WE RESPONDED IN THE U.S. A PERSON CANNOT BE TRIED IN ABSENTIA.

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(3) THERE EXISTS A PROBLEM IN DEFINING THE CONCEPT OF JURISDICTION IN A MUTUALLY ACCEPTABLE MANNER. ARTICLE 2(F) OF THE PROPOSED BILL SPEAKS OF TERRITORY RATHER THAN JURISDICTION AND THAT IS NOT SUFFICIENT FOR DEALING WITH A VAST NUMBER OF MODERN CRIMES WHERE THE PERPETRATOR MAY NOT PHYSICALLY BE IN THE COUNTRY WHEN THE CRIME IS COMMITTED. COSTA RICAN PENAL CODE IN ARTICLES 5 AND 6 APPEAR TO RECOGNIZE THE CONCEPT OF EXTRATERRITORIAL JURISDICTION WHEN THE EFFECTS OF THE CRIME ARE FELT IN COSTA RICA. IT MAY BE POSSIBLE TO WORK OUT SOME LANGUAGE IN THIS AREA WHICH WOULD STRESS THE CONCEPT OF THE PARALLELISM IN THE LAW OF BOTH STATES.

(4) APPARENT AGREEMENT WAS REACHED IN OUR SUGGESTION REGARDING ARTICLE 2(G) OF THE PROPOSED BILL DEALING WITH

POLITICAL OFFENSES.

(5) CONSIDERABLY LESS TIME WAS ALLOTTED TO OUR DISCUSSIONS OF PROPOSED CHANGES IN ARTICLE 2(H), ARTICLE 8 AND ARTICLE J OF THE PROPOSED BILL. UMANA FELT THAT ARTICLE 8 POSED NO PROBLEM AS THE TREATY DID NOT LIMIT LENGTH OF SENTENCES. UMANA AGREED THAT ARTICLE J IS UNCLEAR. CHANGE IN ARTICLE 1 COULD AVOID NECESSITY OF REVISING ARTICLE 2(H).

5. COMMENT. WHILE UMANA WAS COMPLETELY AGREEABLE TO DISCUSSING THOSE POINTS WE WISHED TO COVER HE WAS NOT PARTICULARLY FORTHCOMING WITH SUGGESTIONS FOR MODIFYING DOMESTIC LEGISLATION. THIS WOULD, APPARENTLY, STEM FROM HIS UNDERSTANDING THAT THE MEETING WAS CALLED TO DEAL WITH THE RELATIONSHIP OF THE TREATY TO THE EXISTING LAW INSTEAD OF PROPOSALS FOR MODIFYING THAT LAW TO FACILITATE EFFECTIVE EXTRADITION RELATIONS. HE DID NOT, HOWEVER, APPEAR TO HAVE GIVEN MUCH THOUGHT TO THE IDEA OF OR EVEN THE NEED FOR AMENDING THE DOMESTIC LEGISLATION WHICH LEADS US TO WONDER IF, INDEED, ANY ADMINISTRATION EFFORT WILL BE FORTHCOMING. ONE THING THIS MEETING CLEARLY EMPHASIZED WAS THE NEED WE HAVE TO OBTAIN COMPETENT COSTA RICAN COUNSEL TO ADVISE US ON EXTRADITION MATTERS. WE INTEND TO PRESS JUSTICE ON FUNDING FOR THIS PURPOSE. INGERSOLL

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